PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL [*LORDS*]

Second Sitting

Tuesday 7 February 2017

(Afternoon)

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PBC (Bill 125) 2016 - 2017

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not later than

Saturday 11 February 2017

The Committee consisted of the following Members:

Chairs: † MS KAREN BUCK, ANDREW ROSINDELL

† Black, Mhairi *(Paisley and Renfrewshire South)* (SNP)
† Blackford, Ian *(Ross, Skye and Lochaber)* (SNP)
† Brine, Steve *(Winchester)* (Con)
† Courts, Robert *(Witney)* (Con)
† Cunningham, Alex *(Stockton North)* (Lab)
† Davies, Chris *(Brecon and Radnorshire)* (Con)
† Elmore, Chris *(Ogmore)* (Lab/Co-op)
† Fovargue, Yvonne *(Makerfield)* (Lab)
Greenwood, Margaret *(Wirral West)* (Lab)
† Harrington, Richard *(Parliamentary Under-Secretary of State for Pensions)*
† Harris, Carolyn *(Swansea East)* (Lab)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Mackinlay, Craig *(South Thanet)* (Con)
† Mills, Nigel *(Amber Valley)* (Con)
† Smith, Royston *(Southampton, Itchen)* (Con)

Ben Williams, Clementine Brown, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 7 February 2017

(Afternoon)

[Ms Karen Buck *in the Chair*]

Pension Schemes Bill [*Lords*]

Clause 9

Scheme funder of last resort

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Pensions (Richard Harrington): It is a pleasure to serve under your chairmanship today, Ms Buck. This morning seems a long time ago, but when we adjourned I had just risen to confirm to the hon. Member for Ross, Skye and Lochaber that members' savings are not at risk. The hon. Member for Stockton North might have given the impression of mixing up members' savings and the funders of the scheme. Though I am sure he knows this, I want to be clear. There are various protections around the savings invested—in trust law, in occupational pensions law and through the regulation of investment managers.

Ian Blackford (Ross, Skye and Lochaber) (SNP): It is a pleasure to serve under your chairmanship, Ms Buck. When the Minister rose at the end of this morning's sitting, I had actually concluded, so I will now resume my seat.

Richard Harrington: The hon. Member for Stockton North made various points, and I would like to briefly rebut them. I have already made my first point, in response to the hon. Member for Ross, Skye and Lochaber. The Bill adds to the protections by prohibiting increased or additional charges that could be levied on members for the cost of winding up or transfer during a triggering event period, so members' savings are safe. As was discussed extensively in the other place, the clause addresses the situation where the scheme does not have sufficient funds to pay for the transfer of accrued rights or the wind-up of the scheme during a triggering event period. The Bill provides that a master trust scheme must have resources available to pay for those costs.

The hon. Member for Stockton North asked me a clear question: how frequently will the Pensions Regulator monitor this? To be clear, the supervisory measures allowed for in clauses 14 to 20 state clearly that the regulator is under a duty to authorise these schemes. That is a new approach for the regulator, which will be working with all the master trusts, both before and after authorisation. The regulatory regime is therefore an active process, which rightly focuses the most attention on the highest risk schemes, while maintaining regular contact with all master trusts in the market. It is based on a case management approach, which is not random or ad hoc because it is underpinned by the existing reporting and regulatory framework and activities. Those in turn are strengthened by the new supervisory return and significant events negotiation requirements, which the hon. Gentleman will be familiar with.

The hon. Gentleman seemed to imply that the Government have not made any provision to pick up the pieces if a scheme fails. I maintain that that is not the case. The triggering event regime outlined in the Bill means that the regulator will be closely involved with how the scheme proceeds to resolve its difficulty or close—it has to do one of the two. The regulator already has powers that can be used to support a failing scheme. A good example is the power to appoint a trustee to get into a scheme and act as a trustee—so it can impose a trustee on a scheme and help to sort it out.

The hon. Gentleman also suggested that if the risk is so minimal, the clause does no harm as a back-up measure. He used the sledgehammer and nut analogy, which I think Lord Freud used in the House of Lords, so it is a cross-party analogy. If it is a nut, it might be a small nut, but what is going to happen to the nut? That is not said in a very *Hansard*-like way, but I think we know what it means. I would say that that underestimates the impact of having an unspecified government intervention of this nature.

Alex Cunningham (Stockton North) (Lab): I accept the point the Minister is outlining, but the possibility remains. We know what our financial industries are like. We have seen failure after failure in pension schemes, in the markets and the banks. What happens in the event of a major fraud in a master trust and there is nobody left to pick up the pieces?

Richard Harrington: I will deal with that point a little later. First, let me explain why having unspecified Government intervention is not good.

First, such intervention gives rise to moral hazard. Elsewhere in pensions and regulatory regimes where lifeboats exist, there are measures against moral hazard. We do not want a situation where people can be reckless because they know they can rely on the Government, and setting up ways to get out of their obligations because they know that the Government will pick up the pieces.

Alex Cunningham: The Minister has used the word "unspecified" several times, but he has the opportunity in regulations to consult the industry on how it would set up a funder of last resort. That is what we want. We do not expect him to say, "Right, the Government will underwrite this." We are saying that there should be a consultation exercise to ensure that a funder of last resort can be put in place so that this very small nut that needs to be cracked can be dealt with.

Richard Harrington: I apologise if I put words into the hon. Gentleman's mouth. It is currently unspecified; I agree it could be specified with compensation. The core point and, excuse the pun, the kernel of the nut is that it would still be a Government scheme, with moral hazard.

Secondly, the hon. Gentleman has probably heard significant players in the master trust industry voice serious concerns to us about clause 9. They believe that it could give rise to a rush to exit the market by otherwise successful schemes thinking, for example, that, not unusually in this field, they would have to pay a significant levy over not very much. The hon. Gentleman's points are all valid in their way but Government have to make a judgment. That is why there is a respectable disagreement over clause 9. We have all thought about it carefully.

I believe the Bill strikes a delicate balance between prevention and self-regulation and Government intervention —something that is very hard to do. The clause would disrupt that balance and confuse the regulatory approach. I do not believe that it is a harmless catch-all. I accept the point, as shown by the banking crisis, Equitable Life and other incidents, that such things happen—I would not say it was because it was a Labour Government during the banking crisis or another Government with Equitable Life that those issues arose. It is not possible to give absolute guarantees, but we can reduce risk to the lowest possible level and that is what the Bill aims to do.

In our view, the risk level is already very low for this type of master trust scheme. That is backed up by the Pensions Regulator's current information about the very small number of schemes that are in trouble. That will be published but is not quite ready. To create a Government-backed scheme would perversely create a moral hazard, as I have explained.

Ian Blackford: I am trying to find a helpful way out of this because I can understand why there is a disagreement. We can all accept that the risk we are talking about is to the master trust itself, not to the underlying assets; that is understood. I can understand the Government's position on giving a commitment to this, but might there not be another approach? The Pensions Regulator would take the responsibility after a triggering event and it would have the power to step in. We have the power for the regulator to appoint a trustee; perhaps the regulator might have powers in extreme cases to intervene in the short term to ensure that there is a smooth transition. I know that is not directly within the clause but there might be another way to effect this where we can give guarantees.

Richard Harrington: I thank the hon. Gentleman for his positive intervention. The regulator has a huge number of powers, and the Bill gives a lot of powers that I think would prevent the problem he is talking about.

The hon. Member for Stockton North is forgetting—I understand why—the general rule that the fraud compensation scheme, which applies in many fields, does and will apply to master trusts. I therefore reject his point about fraud. I am not saying fraud could not happen, but there is already a mechanism in place to deal with that.

In our view, therefore, the risk level is already very low. We are against creating a Government-backed scheme because we think it would create a moral hazard. Schemes are currently working to ensure their systems are robust and we do not want them to feel comfortable that there is an entity that will always bail them out. That would not give comfort to scheme members. Indeed, for the Government to say we feel the risk is large enough to warrant a funder of last resort would create uncertainty—in effect, creating the very problem that the Opposition honourably are saying they are trying to avoid.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 4, Noes 9.

Division No. 2]

AYES

Cunningham, Alex
Elmore, Chris
Fovargue, Yvonne
Harris, Carolyn

NOES

Brine, Steve
Courts, Robert
Davies, Chris
Harrington, Richard
Heaton-Jones, Peter
Knight, Julian
Mackinlay, Craig
Mills, Nigel
Smith, Royston

Question accordingly negatived.

Clause 9 disagreed to.

Clause 10

Financial sustainability requirement: business plan

Question proposed, That the clause stand part of the Bill.

Richard Harrington: Clause 10 requires the scheme strategist of a master trust to prepare and maintain a scheme business plan as part of the financial sustainability criterion that I mentioned. Through the business plan, the regulator will be able to monitor the adequacy of the financial resources available to the scheme. The plan is submitted to the Pensions Regulator with the application for authorisation, and is thereafter reviewed and, if appropriate, revised annually and following any significant change, in agreement with the key parties involved in operating the scheme. The clause also contains a power that enables the Secretary of State to prescribe further detailed requirements in regulations.

The scheme strategist is the person responsible for making business decisions relating to the commercial activities of the scheme and is therefore best placed, we believe, to prepare and maintain the business plan. In some cases, they may also be the scheme funder or a trustee. The scheme's future viability may depend on its success in competing with other providers. In the early days, as with the setting up of a business, it is likely to pay out more in expenses than it generates in income, so it needs to plan how it will meet those costs and satisfy the regulator.

The business plan will mitigate the risk of a master trust failing because of inadequate financing or planning. It will be one of the main sources of information on which the regulator will base its assessment of the scheme's financial sustainability. For instance, it will provide key information on the reasonableness of the assumptions underpinning the scheme's business strategy; the adequacy of the financial resources available; and the adequacy and security of the financial resources required to cover the costs that would arise in the event of scheme failure, such as winding-up costs and the cost of securing the transfer of members to another scheme without increasing the administration charge to members.

The detailed requirements will be set out in secondary legislation. That will enable the Secretary of State to consult the regulator and other key stakeholders to ensure that the business plan contains relevant information

[Richard Harrington]

and also builds on best practice. The plan and any supporting information or documents must be submitted by the scheme strategists together with the application for authorisation and, thereafter, within three months of any revisions or changes and at the regulator's request. Many master trusts have business plans in place to provide that kind of information. They are intended to support risk-focused financial supervision, so that the regulator can identify and intervene in schemes that are at risk as a result of inadequate financial planning. I urge that clause 10 should stand part of the Bill.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

Scheme funder requirements

2.15 pm

Richard Harrington: I beg to move amendment 3, in clause 11, page 7, line 7, leave out subsections (2) and (3) and insert—

"(2) The first requirement is that the scheme funder is a body corporate or a partnership that is a legal person under the law by which it governed.

(3) The second requirement is that the scheme funder only carries out activities that relate directly to Master Trust schemes in relation to which it is a scheme funder or prospective scheme funder.

(3A) The Secretary of State may make regulations providing for exceptions from the second requirement.

(3B) The regulations may include provision excepting a scheme funder from the second requirement—

(a) where the scheme funder meets additional requirements specified in the regulations (such as requirements relating to a scheme funder's financial position, its financial arrangements with the Master Trust scheme in question or its business activities);

(b) where the scheme funder applies to the Regulator and provides the Regulator with information specified in the regulations, or such other information as the Regulator may require in order to satisfy the Regulator that the Master Trust scheme is financially sustainable.".

This amendment gives a power to the Secretary of State to make regulations providing for exceptions to the requirement that a scheme funder must only carry out activities directly relating to the Master Trust scheme (or schemes) for which it is a scheme funder.

The Chair: With this it will be convenient to discuss the following:

Amendment 26, in clause 11, page 7, line 7, at end insert—

"(i) This should not apply to insurance companies regulated by the Financial Conduct Authority".

This amendment would not require Master Trusts to be separate legal entities from any business where that business is regulation by the Financial Conduct Authority.

Amendment 34, in clause 11, page 7, line 11, leave out subsection (b) and insert—

"(b) either the only activities carried out by the body corporate or partnership are activities that relate directly to the Master Trust scheme, or if the body corporate or partnership carries out activities other than those defined as "restricted activities"."

This amendment allows for exceptions to the requirement that a scheme funder must only carry out activities directly relating to the Master Trust Scheme for which it is a Scheme Funder.

Government amendment 4.

Amendment 35, in clause 11, page 7, line 21, at end insert—

"(7) The Secretary of State may by regulation define "restricted activities", these regulations must set out activities that a scheme funder cannot engage in to minimise risk of losses or liabilities which might deplete or divert its financial resources."

This amendment makes provision for the Secretary of State to define "restricted activities" by regulation, including a list of specific activities restricted, in order minimise risk of loss by Master Trust Scheme Funders.

Richard Harrington: Clause 11 requires a scheme funder to be a legal person who carries out only activities that directly relate to the master trust. The policy intention is to ensure that the financial position of scheme funders, and their financial arrangements with master trusts, are transparent and clear to the regulator. That will enable the regulator to make an assessment of the scheme's financial sustainability when deciding whether to authorise the master trust, and will support the regulator's ongoing financial supervision of the scheme, post-authorisation.

In debate in the other place, and in representations received from stakeholders, the concern was raised that the scheme funder requirements would lead to costly corporate restructuring and so might undermine the supporting of master trusts through the other lines of business that some master trust providers carry out. The Government amendments would make two changes to the scheme funder requirements in clause 11 that we believe address this issue. The first would allow an entity to be a scheme funder and, therefore, carry out activities in relation to more than one master trust, and also carry out activities, such as due diligence, where it is considering becoming the scheme funder of a new master trust scheme. The second would provide a power for the Secretary of State to create exceptions to the requirement for the scheme funder's activities to be limited to the master trust. Scheme funders who meet the requirements that are to be prescribed in regulations will be able to carry out activities unrelated to master trusts—for example, providing shared services to other schemes.

We hope that this easement will minimise disruption to existing corporate structures and shared service arrangements. In addition, enabling scheme funders to carry out activities in relation to more than one master trust may facilitate consolidation in the market by making it easier for a scheme funder to rescue a failing master trust.

The first regulations made under the power under clause 11(3A) are to be subject to the affirmative procedure; subsequent regulations will be subject to the negative procedure. That is obviously to provide the necessary scrutiny in the first instance after the consultation. Given the importance of scheme funders to the financial sustainability of master trusts, and the potential impact on scheme funders of the requirements in clause 11, we recognise that the regulations first exercising the power to set out exceptions to the requirement should be subject to parliamentary scrutiny and debate.

Alex Cunningham: I am delighted to serve under your chairmanship, Ms Buck, albeit with a frog in my throat. Our concern with this clause regards the strict nature of requiring a master trust to be a separate legal entity, which could have numerous consequences across the board. Since the contents of the Bill have become known, I have tried to meet as many parties and groups as possible that have an interest in the Bill, to hear their perspectives, thoughts and concerns. This clause came up often. I note that the Minister has tabled amendments to it, which I welcome as a first step towards recognising that the original clause was not fit for purpose.

Amendment 3 widens the definition of the two legal characteristics that a scheme funder must meet in order for a master trust to be authorised by the Pensions Regulator. It gives the Secretary of State greater discretion in exempting a scheme from the second requirement. However, the amendment does not make clear what policy considerations will apply to how that discretion is applied. Will the Minister confirm that insurance companies regulated by the Financial Conduct Authority with master trusts will be exempt from the second requirement, giving members access to the full resources of the insurance company, which will carry full liability for costs in the event of a master trust scheme failure? Our amendment 26 seeks to clarify just that—namely, that if an organisation is already regulated by the Financial Conduct Authority, which is incredibly thorough with its regulation, it does not need to register as a separate legal entity as well.

As the Minister said, my colleagues in the Lords raised concerns about the clause, proposing instead that the scheme funder be approved by the Pensions Regulator, but that was rejected with the argument that it would be more difficult for the regulator to obtain transparency on the financial position of the funder and its financial arrangements with the master trust. Instead, colleagues tabled a motion requiring the scheme funder to be constituted and to carry out its activities in a manner that enables its financial position, and the financial arrangements between it and the master trust, to be transparent to the regulator. However, that was withdrawn on the assurance that the Government would be considering that later in the legislative stages.

So here we are, with an amendment from both the Opposition and the Government on how to ensure that we are not unnecessarily enforcing regulation on companies that are already bound by strict regulation elsewhere. The difference here is that the Government's amendment is on the vague side. The second requirement for the scheme funder that the Government have proposed is that it carries out only activities that relate directly to master trust schemes of which it is a scheme funder or prospective scheme funder. The line in amendment 3 following on from the second requirement gives the Secretary of State the power to

"make regulations providing for exceptions from the second requirement."

That needs more detail and clarity. What possible exceptions do the Government have in mind? Has the Minister yet considered what these exceptions may be?

We need stability, and to provide stability for the numerous businesses and companies that rely on us to provide effective laws governing their livelihoods and, particularly in relation to master trusts, the livelihoods of millions of people in this country. This is not largely a matter that we disagree on—I think we share the same aims—but I want to be able to provide more assurance to the companies watching today that we will not seek to bear down on them with extra costs and paperwork when they are already abiding by regulation from the Financial Conduct Authority.

Although the Government's amendment does not give me enough specifics about the type of exceptions that they would give the Secretary of State the power to decide, I welcome their approach and their acknowledgement that it is counterproductive to place extra requirements on companies that already follow the rules diligently. We had a particular concern that forcing a restructuring on master trust schemes could weaken the position of the funder, which is especially important when one considers the debate on the issue of the funder of last resort. We need larger companies to be in a position to pick up failing master trusts, and should ensure that they are well equipped to do that.

I welcome the amendment from the Scottish National party Members, which would also allow exceptions to the requirement that a scheme funder carries out only activities directly relating to the scheme for which it is a funder. I am optimistic that we will leave here today having made positive progress on this matter, as we largely seem to agree on the principle of exceptions.

Amendment 26 would except insurers that operate under stringent Financial Conduct Authority regulation. Where insurers with master trusts operate under both sets of regulation, it must be ensured that unnecessary duplication or overlapping of the requirements is avoided. In particular, insurers should not have to reserve even more additional funds to meet the requirements set out for master trusts, as they already hold the resources needed for this purpose under other regulatory regimes. Members of master trust schemes used for automatic enrolment should meet high solvency and reporting standards, but these organisations have already met standards set under other frameworks, such as that of the FCA. We believe that it is not necessary to expect large companies with significant capital to be required to hold additional capital on top of that in order to meet the new obligations in the Bill.

Can the Minister provide assurance right now that insurance companies that are already under strict regulation by the Financial Conduct Authority will be exempt from the separate legal entity clause, and will he provide clarity on when we can expect to see the Secretary of State's regulations? The scheme funder requirements in the Bill will bring no additional benefit to the many people in master trust schemes operated by insurers, which are already well protected. Additional requirements on FCA-regulated insurance companies will lead to significant additional costs. I hope that the Government can address my concerns, and that they will outline exactly what regulations the Secretary of State will look to implement.

Ian Blackford: The Minister's amendment of 31 January —Government amendment 3—gives the Secretary of State power to make regulations providing for exceptions to the requirement that a scheme funder must carry out only activities directly relating to the master trust. We do not know what conditions will attach to the exceptions, or even if the Secretary of State will exercise that power. An indication of the Government's intentions would be

[Ian Blackford]

helpful. However, the indication that there will be some discretion is positive. I would welcome clarification from the Government on how and when the regulatory powers outlined in the amendment will apply, and in what circumstances they might be used.

Will the Government confirm whether they plan to consult with the insurance industry before defining "information" and "additional requirements"? Zurich has said that the approach taken by the shadow Pensions Minister in amendment 26 and the SNP's amendment give greater certainty, which would be preferable. As far as Labour's amendment 26 is concerned, we share the concerns about the unnecessary duplication of requirements for insurers, which already operate under stringent regulatory standards. Our amendments 34 and 35 would have a similar effect to amendment 26, as they state that the requirement need not apply to firms whose activities are already restricted by virtue of existing regulation.

The Prudential Regulation Authority's rules mean that insurers' activities are restricted. This will mean that the activities of the scheme funder not directly related to the master trust are transparent and do not threaten the solvency and sustainability of the master trust. Amendment 35 makes provision for the Secretary of State to define "restricted activities" in regulations, including through a list of specific activities restricted in order to minimise risk of loss by master trust scheme funders.

Richard Harrington: This is a very good and laudable example of Government and Opposition Members trying to achieve the same objective. I have already heard many of the arguments used today by the Opposition; the Association of British Insurers and others have made similar arguments. As I have often said before, this is not black and white. It is not as though one argument makes absolute sense and the other is absolutely stupid; that is not the case at all. The argument is legitimate. We have had to think about this following representations, and following the Lords debate. However, I do not think that the amendments would achieve the level of transparency needed for the regulator's financial assessment of the scheme.

Amendment 26 would disapply the requirement on an FCA-regulated insurance company that is also a scheme funder of the trust to set up a legal entity. The amendment would hamper the regulator's assessment of the final sustainability of the scheme. The matters overseen by the FCA in relation to the prudential and financial conduct of the insurance provider are not the only aim behind the clause; they are aims, but not the only aims, and are not the only aspect that the regulator needs to take into account in the assessment.

The hon. Member for Stockton North asked me to clarify quite a few points. He asked whether the FCA-regulated companies will be exempt. They will be exempt if they meet the prescribed requirements in the regulations. He asked how we will get to the regulations. We will consult on them; we are not simply going to make them up. They are not something that the Secretary of State will dream up in his office. I promise that they will be comprehensive. The intent is to ensure that there is no duplication of regulation; that is why we have created the extra flexibility of the Secretary of State's discretion.

2.30 pm

The hon. Gentleman asked what factors will be considered when we consult on the regulations. They are solvency of the entity, what regimes it falls under, transparency of arrangements and what connections there are between the funder and provider of the schemes. On when the draft regulations will be published, we have stated clearly that we expect consultation on policy in the autumn and the draft regulations in 2018, so that is not a long way away.

Amendments 34 and 35 would expand the range of activities a scheme funder of a master trust can undertake by allowing the funder to carry out any activities apart from those that have been prescribed in regulations as restricted activities. The intention seems to be to introduce more flexible funding requirements, but specifying the activities in which the scheme funder cannot engage is cumbersome. There would be a risk of certain activities being missed out, and specifying restricted activities could have unintended consequence, despite perfectly good intentions.

We have tried in the Government amendments to create flexibility in what we believe is a better way, but to achieve broadly the same outcomes as amendments 26, 34 and 35. I therefore urge hon. Members not to press the amendments.

The Chair: Will the Opposition confirm whether they wish to press their amendments to a vote?

Alex Cunningham: I do not intend to.

The Chair: Thank you.

Alex Cunningham: It is amazing the amount of consensus that we are managing to achieve today, but I still return to duplication. The Minister is saying that measures will be in place through regulation to ensure that we do not have the duplication I am concerned about. It all boils down to these invisible regulations.

I am grateful to the Minister for providing clarity on the areas that will be covered by the consultation on the future regulations. The industry is concerned that they are a considerable time off. He said it is not long until 2018, but the cliché is that a week is a long time in politics. It is important to send clear signals to the industry, particularly to those who are likely to be or could have been compelled to have the additional administrative burden on them, to make it clear to them that this will not be required because they should be able to read much of that in the document that goes out for consultation.

Amendment 3 agreed to.

Amendment made: 4, in clause 11, page 7, line 20, leave out subsection (6) and insert—

'( ) The first regulations that are made under subsection (3A) are subject to affirmative resolution procedure.

( ) Any subsequent regulations under subsection (3A), and regulations under subsection (4), are subject to negative resolution procedure.".—*(Richard Harrington.)*

This amendment makes provision about the Parliamentary procedure for the new regulation-making power provided for in amendment 3. The power will be subject to the affirmative procedure when first exercised, and to the negative procedure on any subsequent exercise.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12

SYSTEMS AND PROCESSES REQUIREMENTS

Alex Cunningham: I beg to move amendment 27, in clause 12, page 7, line 43, at end insert—

> "() A minimum requirement of annual reporting of administration, fund management costs and transaction costs for each asset class, drawdown product and for active and passive asset management strategies.".

This amendment would introduce annual reporting requirements for Master Trusts.

In his speech to the TUC last week, the Minister spoke about the consensus there may be in Parliament about pensions policy. In some areas, he is right, but he and I know that we are in very different positions on matters such as the future of the state pension and how it can be applied to different people in different circumstances—the Women Against State Pension Inequality Campaign has been mentioned in that context. One area where the Minister and I agree and which affects the Bill and clause 12 is the need for maximum transparency in the pensions market, revealing to members of pension schemes, including master trusts, exactly what fees they are being charged and for what. In his speech to the TUC, the Minister said:

> "We have to get transparency. It's not an option to do nothing. I'd like to thank the many people in this room that have worked for it."

The amendment would give the Minister and his Government the opportunity to demonstrate that consensus does exist, to prove their credentials on transparency and to ensure that members of master trusts have access to an annual report of administration, fund management costs and transaction costs, so that they can see exactly how the fees are broken down and what they are actually paying for. It would also help to satisfy the Financial Conduct Authority's desire to reveal all costs, which it believes will result in competition and potentially better performance for members.

No Member of this House would go into a marketplace to buy anything without seeing the cost clearly displayed, whether that be a large white goods item or just a new shirt or blouse. Similarly, we must ensure that each member who is auto-enrolled into a master trust can establish what each investment choice and drawdown product costs. Anything short of that betrays millions of citizens. We have a duty to ensure that a reporting line is opened between the master trust and its members if we are to achieve what Opposition Members and, I believe, the Minister want to achieve.

I know there may be some resistance from those in the industry to some of those ideas, even though most have tried to convince me over the past few months that I have been shadow Pensions Minister that they are open to greater transparency, are trying to deliver on it and will do so much better in the coming months. However, I think we need to help them by laying down a marker in the Bill that will set a standard of the Government's expectation.

In the upper Chamber debate, Lord Freud said

> "We clearly need to ensure that trustees of occupational schemes and the independent governance committees of workplace personal pension providers have complete, consistent and standardised cost and charges information before they can report it to members; at this point, they do not… We want pension scheme members to have sight of all ?costs and charges, regardless of how they are incurred, and to give members the confidence that there are no other hidden costs and charges."—[*Official Report, House of Lords,* 19 December 2016; Vol. 777, c. 1527.]

There is that consensus again. I could not have put it better myself, although the noble Lord could have done more to make it a reality in the Bill.

Rather than wait for the final outcome of the consultation exercise on pension fund cost collection promised by the Secretary of State, the amendment would being master trusts into line with those in the Netherlands, where there is a statutory requirement for trustees to report to their members on three cost headings: administration, investment management and transactions. We need data that enable clear analysis of costs incurred and can be applied ex post to the gross returns delivered by workplace pensions. Then we can get to the real gross return that has been generated on the assets and assess how much of that real gross return has slipped from the saver to the financial services sector. By understanding that slippage in its entirety, we can begin to understand what money has been paid for whatever value has been generated.

Some good things are already happening in the pensions world, but much more needs to be done to progress the transparency agenda. The only area of asset management that is ready to be analysed is the funds used by the local government pension scheme. They are about to be analysed by the scheme advisory board, to ensure they are delivering best value for sponsors and members alike. The architecture to get the data, analyse it and present it is being discussed with a view to being built, and will form a platform from which other projects, including the value-for-money analysis needed for all workplace pensions, can be delivered.

I believe the Minister is a fan of this work too, so I hope that he and his Government recognise that the easiest and most efficient way to ensure that data for master trusts are collected is to adopt the LGPS cost template. After all, it has been sanctioned by the Department for Communities and Local Government and the data points agreed with Investment Association members, who in the main will be the same suppliers of asset management to the LGPS.

What an opportunity we have before us to herald the day that every person auto-enrolled into a master trust is given the opportunity to understand what pension system they are going into, how much it costs and how much they will get—even if in a defined-contribution scheme that is more estimation than fact. To do otherwise than give them that advantage is a clear breach of fiduciary duty owed to scheme members. We are all aware that the average size of a pot for a person in a master trust is very small, but the principle of driving best value is probably all the more important.

I asked for a simple example of what changes in costs could mean for a member of a pension scheme, and the Unison guide—perhaps I should declare that I am a member of Unison—to defined-contribution costs provided the following example. A total annual contribution of £10,000 might be made up of £4,000 of personal contribution, £4,000 of matched contribution by the corporate sponsor and £2,000 of tax top-up. If we make that level of contribution constant over 40 years, use a 5% gross performance figure, which is the market rate of return over the longer term, and vary the costs of the

[Alex Cunningham]

industry from 0% to 2%, then at nil percentage cost the final size of the pension pot is £1,268,000. At 0.75% costs, the final size of the pension pot is £1,051,000. At 2% costs, the final size of the pension pot is £777,000. That is a huge difference.

The FCA's "Asset Management Market Study Interim Report" said:

"The evidence suggests there is weak price competition in a number of areas of the asset management industry. This has a material impact on the investment returns of investors through their payments for asset management services."

The example I just gave probably demonstrates that. One of the FCA's conclusions was that there should be a requirement for increased transparency and standardisation of costs and charges information for institutional investors. The Minister's affirmative one-word answer to my question on the Floor of the House about whether the Government had agreed to implement the FCA's recommendations in full was very welcome. Today, we have the opportunity to deliver in part some of what is desired through the Bill.

It is a fundamental market failure that no pension fund can currently understand its cost basis. It follows that if there is no understanding of costs, the investment strategy cannot be fully evaluated. Members cannot make the accurate choices needed to improve their investment performance without that knowledge. If a member is incurring costs above 0.75%, we know that will have a considerable impact on the value of pension pots both in accumulation and in decumulation. That is why we must ensure that reporting to members includes the accumulation and drawdown phases.

Since the Government introduced the drawdown option in their new pension freedoms, all the attention has been on whether members will be wise with their money. No real attention has been paid to the costs associated with the option, and probably even less attention to the potential long-term effects of a decision to access a lump sum at a much earlier stage in a person's life. The aim is to keep options open and increase income through investment growth, but if investments do not go the way the member would hope, or if their pension pot is depleted by opaque charges, the income will be reduced all the more in the longer term. The risk and the responsibility rest with the member. Charges for ongoing administration and investment management will be deducted from their account, which is all the more reason transparency and low charges are important. Members of this House should therefore see that the efficient management of members' funds is critical in ensuring that we do not create a pension crisis that our citizens are forced to endure in their retirement.

I will turn to the FCA's excellent interim report in a bit more detail. The UK's asset management industry is massive: it manages £6.9 trillion of assets. I am not sure whether a trillion is a billion billions? I think it is a billion billions.

Richard Harrington: I am not an expert, but I think it is different in the United States from here—like most things.

Alex Cunningham: The Minister tempts me, but I will move on. The UK's asset management industry manages more than £1 trillion for individual investors in the UK and £3 trillion on behalf of UK pension funds and other institutional investors that is invested by that management industry. The service offered to investors comprises a search for return, risk management and administration, although it is the investor who bears virtually all the risk.

More than three quarters of UK households with occupational or personal pensions use such services, including the more than 10.2 million people saving for their retirement through pension schemes. Very few of us are not touched by this sector, although most people have probably never heard of it; more important, they will have little idea how much of their hard-earned cash goes into the industry. The FCA's report confirms that asset management firms

"have consistently earned substantial profits…with an average profit of 36%. These margins are even higher if the profit sharing element of staff remuneration is included."

2.45 pm

Despite his Conservative credentials, I am sure the Minister is, like me, a *Guardian* reader. Last week, *The Guardian* reported that more than 4,000 City-based financiers were paid more than €1 million—£850,000—in 2015, including one who received nearly €34 million. The newspaper highlighted the earnings of two people, one whose €199,000 salary rocketed to €33.7 million after bonuses were included, and another who received €28 million. Both worked in asset management rather than investment banking, which is traditionally regarded as the sector with the bigger bonuses. For all I know, each and every one of those individuals really earned their huge fees; the problem is that neither I nor anyone else knows whether the pensions market gets real value for the fees that are paid.

On transparency of costs, the FCA report states that

"investors are not given information on transaction costs in advance… These costs can be high and add around 50bps on average to the cost of active management for equity investments.

In addition, we have concerns about how asset managers communicate their objectives and outcomes to investors. Investors may continue to invest in expensive actively managed funds which mirror the performance of the market because fund managers do not adequately explain the fund's investment strategy and charges."

The LGPS has been addressing that problem through its transparency code in England, Wales and Scotland. IT has issued guidance to funds to adopt that code, but it is currently only voluntary and measurable outcomes are still some way ahead.

The drive for transparency is not as present on the retail side; only half of investors are even aware whether they are paying charges at all. I will illustrate that issue using a fridge analogy. If someone buys a fridge, they can compare the marked prices, but a comparison should really include energy use, delivery charges, warranties and much more. Very few of the very different elements of charges are anywhere near as transparent when it comes to asset management.

More of us will be familiar with the investment disclaimer "past performance is no guarantee of future returns." The FCA report highlights the reasons for that. Funds measure performance over different time periods, and there is a practice of merging poorly performing funds,

"giving investors the false impression that there are few poorly performing funds on the market."

Even those that do outperform

"do not continue to outperform the relevant market index or peer group for more than a few years."

Pension trustees are often sold active investment strategies on the grounds that they deliver higher returns than passive funds that track an index—in the UK, the split is around 20% passive to 80% active, whereas in the USA it is closer to 50/50—but the evidence in the FCA report suggests that

"actively managed investments do not outperform their benchmark after costs"

and the costs of active investments are significantly higher than those of passive investments. Charges for active investments have also remained stable, unlike charges for passive investments.

Ian Blackford: On a point of order, Ms Buck. We are all keen to get through the Bill. I am sitting here listening to the hon. Gentleman and wondering what relevance what he says has to the amendment. Quite frankly, it seems to have very little relevance.

The Chair: That is a matter for the Opposition spokesman.

Alex Cunningham: I am disappointed that the hon. Gentleman is not following my argument, but perhaps he will as I move to my conclusion.

As I was saying, charges for active investments have remained stable, unlike charges for passive investments, which have been falling. The FCA suggests that that reflects competitive pressures and the unwillingness of funds in the active fund market to undercut each other, and it says that weak pressure on prices can lead to weak cost control. The FCA report is particularly scathing about the role of investment consultants: with 60% of that market controlled by three firms, the FCA is considering a market investigation reference to the Competition and Markets Authority. The report concludes with a number of very welcome interim proposals on remedies, not least on transparency and all-in fees, but this is a hugely powerful and profitable sector and it will be lobbying hard to water down any action.

The Secretary of State confirmed that the Government will consult on hidden costs and charges later this year. On Second Reading, he said:

"Transparency is a key area. Hidden costs and charges often erode savers' pensions. We are committed to giving members sight of all the costs that affect their pension savings… We plan to consult later in the year on the publication and onward disclosure of information about costs and charges to members. In addition to the Bill, other things are clearly required to give greater confidence in the pensions system."—[*Official Report*, 30 January 2017; Vol. 620, c. 756.]

I asked in that same debate why it is necessary to start consulting people when we should simply be saying that we want to know what all the costs are in the entire investment chain. I said that, yes, I agree with consultation—but surely we are getting to the end of the tunnel on that.

The FCA is currently holding two separate consultations on cost transparency. The first is in response to the watchdog's interim report on its asset management market study and calls for an all-in fee approach to quoting charges. The second, which closed to responses on 4 January, could require asset managers to disclose aggregate costs and then provide a further breakdown on request. That is good news and surely statutory bodies such as independent governance committees, the Local Government Pension Scheme advisory board and the Pensions Regulator are quite capable of making sure that whatever comes out of the FCA's consultations is enforced. The only beneficiaries of further consultations are the asset managers, who will have won yet more years of grace in which they can operate under the radar.

The Investment Association has questioned the data and metrics the FCA used to come to its conclusions that active funds do not on average provide better value than passive funds. I am concerned that, despite making all the right noises and promising full transparency, the Investment Association has set out to kick the consultation process down the long road by persuading the Department for Work and Pensions that it needs to discover exactly what the FCA has spent the past two years discovering.

If we are to have another consultation, it will be in the teeth of all the evidence gathered so far, at enormous expense to Government and to the private sector, and will serve employers and workers very badly. Perhaps it is time for the DWP to stop consulting and start turning the current consultations into enforceable legislation. It should learn from its colleagues at DCLG, who, as I said earlier, have endorsed the work of the LGPS advisory board. DCLG's own programme of fund consolidation included advice that the newly forming asset pools should prove to them that active fund management should be no more expensive than passive.

Craig Mackinlay (South Thanet) (Con): I do not want to stop the hon. Gentleman when he is in full flow—we are very much enjoying his oration about the effects of compounding and charges. Surely, as we have more master trusts and the auto-enrolment market gets bigger and bigger, it will be a natural feature of that market that people will be more interested and aware of the charging structure. My personal view is that the concerns that the hon. Gentleman raises will come out as the market expands and evolves, and more and more of these trusts come forward. Much as I have enjoyed what he has to say, I have a feeling that that will be the natural progression of things in the market.

Alex Cunningham: Although I am grateful to the hon. Gentleman for his intervention, it is perhaps a typical response from a Conservative politician: just leave everything to the market. In my opinion, we should not leave everything to the market.

When offering investment funds to employers and members, master trusts need to prove the value of the investment post-charges and that active strategies are no more costly than passive. They should remember that the transaction cost issue, badly delivered in 2013, is up for review in 2017 and forms part of the auto-enrolment review.

The People's Pension, the not-for-profit master trust launched by construction sector financial provider, B&CE, with 1.7 million members, is NEST's closest private sector rival.

Ian Blackford: Could the hon. Gentleman recap and clarify what he just said—that active fund management is no more expensive than passive fund management?

Alex Cunningham: That is exactly what I said earlier in my speech. Some of the people who have briefed me have said that that is very much the case.

NOW: Pensions, the master trust backed by Denmark's ATP, also introduced employer charges at the beginning of 2016, alongside a 0.3% management fee and a £1.50 administration fee. Morten Nilsson, the scheme's chief executive, argued that the cost was a necessity if NOW: wished to continue serving as a scheme of last resort for any employer.

We all agree about the issues. Everyone now acknowledges that something must be done, and done with urgency, and the Secretary of State appears to be on board. The auto-enrolment process must not be jeopardised by hidden cost scandals that emerge down the line, when it is revealed that valuable small pots could have been so much more valuable. Our aim is to ensure that master trusts are obliged to report to members. We should set that out for employers that are considering using a master trust. That is the underlying reason for the amendment, which I commend to the Committee.

The Chair: Before I call any other Members or the Minister, let me say that I am minded not to have a broad debate on stand part, because we have already covered a lot of the ground. Perhaps the Minister in particular will reflect on that before he speaks.

Ian Blackford: I will be brief. I want to pick up that issue of active versus passive fund management, because if anyone thinks that an active fund manager will not have higher costs than a passive fund manager, I am afraid that they have betrayed that they know nothing about the fund management industry. Put simply, anyone engaged in active fund management will have to deploy research and fund management skills; someone investing as a passive fund manager is exactly that, a passive fund manager.

Richard Harrington: Itching though I am to rebut some of the general points on transparency, I will do my best to stick to the amendment. As a point of clarification, however, the bit of the FCA review that the hon. Members for Stockton North and for Ross, Skye and Lochaber mentioned in fact makes the point not that active fund managers have more costs, but that over a period of time there is not much difference in returns. That is a totally different matter, but I think that was the point intended—I, too, read the report.

A final matter, given your instructions, Ms Buck, is to point out to the Committee that 1 trillion is 1 million million. A keen if somewhat nerdish Government Member—I am not sure who—came up with that information, of which I was not aware. I hope that the Opposition spokesperson will at least look at *Hansard* to see what 1 trillion is, since he missed all that.

I will not rebut the general transparency point, although I am itching to do so. However, I confirm to the Committee that I do in fact read *The Guardian*. That was the allegation made by the hon. Member for Stockton North. I will, however, refer only to the transparency bit of the amendment.

The amendment would insert a new subsection making it clear that regulations about the processes used to run the scheme may include a provision regarding a minimum requirement of annual reporting of administration, fund management and transaction costs. On the face of it, that takes into consideration a lot of the transparency points made by the Investment Association one way and the various lobby groups to which we have all spoken the other way—as the hon. Gentleman mentioned. The Government are taking action on that. The FCA report is an interim one and lots of things are in process. I am committed to transparency, but the question is what is relevant to the Bill.

The objective of the clause is to ensure that schemes are run effectively. It contains powers to make regulations that will specify what aspects of the scheme's systems and processes the regulator must take into account in deciding whether they are sufficient to ensure that the scheme is run effectively. Examples of what such regulations may cover are listed in the Bill. The list already includes processes relating to transactions and investment decisions. We have been clear that the examples given are not exhaustive and that regulations may include other matters relevant to systems and processes. A guiding principle in setting the scope for the authorisation regime has been ensuring that master trust regulation is proportionate.

I should point out that existing legislative requirements already require trustees of occupational pension schemes offering money purchase benefits, including master trust schemes, to make an annual statement. The hon. Gentleman did not mention that: they are already required to make an annual statement regarding governance, which is known as the chair's statement. It is appended to the scheme's annual report and accounts.

The Government have an obligation under section 113 of the Pension Schemes Act 1993, as amended, to make regulations requiring transaction costs and administration charges of money purchase schemes to be published. We intend to consult, because the subject is very complex, and we are not, as the hon. Gentleman asserted, kicking it down the line. It is not that the Department for Work and Pensions does not want to do it. We intend to consult this year about how this information is published and proactively reported to pension scheme members.

3 pm

Disclosure is very complex. The fridge example that the hon. Gentleman gave is actually more complex than he described. He mentioned energy information and other things, but do people want to know, for example, how much the steel, plastic and the light in the fridge cost? They want to know the cost of the fridge. We must ensure that information is disclosed in a way that is comprehensive but assists members.

In the light of that, I believe the amendment is not necessary. The Government already possess the necessary primary powers and are well on the way to achieving the hon. Gentleman's stated purpose, which I laud. I urge him to withdraw the amendment.

Alex Cunningham: The challenge from the hon. Member for Ross, Skye and Lochaber is one I need to take back to those who advise me, to get an even greater understanding. I thought we would hear a few words of support from him on transparency, on which the Minister and I certainly agree.

I appreciate the Minister's response. As he says, this is quite complex. I do not believe for one minute that the Government do not want to carry out the consultation exercise, but people out there in the industry are very keen that the Government get on with this, as are members. Members are keen to understand the costs and what they will be told about what their investments are costing them. I will reflect on the Minister's answers in full, but in the light of what he said, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Clause 13

Continuity strategy requirement

Question proposed, That the clause stand part of the Bill.

Richard Harrington: As I explained, there are criteria that a master trust must meet to be authorised by the regulator, one of which is that the scheme has an adequate continuity strategy. The clause sets out the requirements for that continuity strategy. It must set out how the interests of scheme members will be protected if the scheme experiences a triggering event—that is, an event that could put the scheme's future at risk.

The aim behind the clause and the related measures is to ensure continuity of pension saving for the members of the scheme when that scheme experiences an event that could put its future at risk. That also benefits employers using the scheme, particularly those using it to meet their automatic enrolment legal obligations. An adequate continuity strategy would demonstrate that careful consideration had been given to what the scheme would do if it were at risk of failing. That should make the closure of master trusts more orderly and managed, which is good for members and employers. We all agree that chaotic and unplanned closures would likely be detrimental to them.

The reasons for and circumstances that could lead to a master trust failing may be different from more traditional occupational schemes. The risks for members and employers are different. That is of particular significance because master trusts tend to have a relatively high number of employers and members, and therefore tend to be less engaged than when an employer has a single scheme for their own employees.

That means that winding up a master trust may involve a lot of work and take a lot of time, and be complicated, difficult and expensive. Regulations under the clause will set out what the strategy should include and what actions the scheme will take to manage and protect the assets. The Government believe it essential that master trusts have adequate continuity strategies.

Nigel Mills (Amber Valley) (Con): I have a quick question. Subsection (9) says that the strategy must be sent to the regulator within three months of being revised. Given that that must mean the strategy has been revised and finalised, why would we not want the regulator to get sight of it much quicker, in case there is something in it we are concerned about?

Richard Harrington: I believe the three months was reached after discussion with the regulator, taking the worst case into consideration. That is a long stop—it would generally be quicker than that—but it came out of discussions with the regulator.

We believe it is essential that master trusts have those continuity strategies and I hope clause 13 will stand part of the Bill.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

List of authorised schemes

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient clauses 15 to 20 stand part.

Richard Harrington: I am confused. I am proposing that clauses 14 to 20 stand part. Is that correct?

The Chair: That is correct.

Richard Harrington: I am sorry, I just wanted to make sure. I thought that was the case.

The clauses make provision for a new supervisory regime for master trust schemes. One of the great strengths of the authorisation regime is that its requirements are ongoing. An authorised master trust will have to ensure that the Pensions Regulator remains satisfied, and is not just satisfied at the beginning, that it continues to meet the authorisation criteria to continue operating in the market. The clauses ensure that the regulator receives and can request the information it will need to be satisfied that the authorised schemes continue to meet the authorisation criteria, and it can withdraw the authorisation if that ceases to be the case. I believe they are very sensible clauses.

Clause 14 requires the regulator to maintain and publish a list of authorised master trust schemes. This provision will help employers looking for a scheme for automatic enrolment purposes and ensure that there is transparency about which master trusts have achieved authorisation. Clause 15 requires the trustees and scheme funders of authorised master trusts to send the scheme accounts and the scheme funder's annual accounts to the regulator annually. This information is necessary for the regulator's ongoing financial supervision of the scheme. We believe that it will play a key role in the regulator's consideration of the reasonableness and accuracy of the estimates set out in the business plan, which I mentioned before, and about the running costs, sources of income and profit and loss in relation to the master trust's activities.

The clause will also require each master trust scheme funder to provide its accounts to the regulator on an annual basis. Those accounts are also required as part of the authorisation application at the beginning, but the clause ensures that they have to do it on an ongoing basis. Taken together, that will enable the regulator to risk-assess the solvency of scheme funders and the strength and enforceability of their commitment to providing funds for the master trust.

Nigel Mills: I have another boring techie question, I am afraid. The clause specifies that the scheme funder's accounts must be provided within nine months of the end of the financial year, but for the actual master trust scheme accounts it says

[Nigel Mills]

"no later than two months after they are obtained by the trustees."

Is there some other provision that creates a backstop date when the trustees have to get those accounts or could we be waiting, in theory, forever to get the actual accounts for the scheme? I guess there must be a provision somewhere.

Richard Harrington: If I may, I will return to that point. I am a little confused by it, although I am not saying that my hon. Friend is trying to confuse me. If I may, I will continue in full flow and will do my best to answer it by the end of my comments or apologise to him.

The measure will enable the regulator's assessment of the financial sustainability of the master trust to take that information into account, to the extent that it effects the financial position of the scheme. The combination of the information from the scheme accounts, the scheme funder's accounts, the business plan and supporting documents will support the regulator's ongoing financial supervision of a master trust.

Clause 16 provides that the regulator may, by notice in writing, require the trustees of an authorised master trust scheme to submit a supervisory return. The Government recognise that the requirement means additional work for trustees. Therefore, the clause provides that a supervisory return can be requested only once in any 12-month period at most, and that trustees are given at least 28 days to compile and submit the return. It may be appropriate for the Government to specify the information that can be requested through such a return. The clause allows the Secretary of State to make regulations to that effect.

Clause 17 provides that the regulator must be notified in writing if significant events occur in relation to an authorised master trust scheme. Those events will be defined through regulations. I will briefly explain what the Government intend to capture by the term "significant events" and give an example.

We intend that the list of significant events will capture events that could affect the ability of an authorised master trust scheme to continue meeting the authorisation criteria. I should like to be clear that the occurrence of a significant event in a master trust scheme will not necessarily have an impact on the ability of that scheme to meet the authorisation criteria, but it may have such an effect. For example, the scheme may have a change of trustee. As the fitness and propriety of a trustee is linked to the authorisation criteria, the regulator must be informed of such a change so that the new trustee may be assessed against the relevant standards—the regulator may well do that, and that would not affect the scheme's authorisation status. Equally, there could be an impact. The clause sets out who will be subject to the reporting duty, and again the regulator can issue a civil penalty for failure to comply.

On clauses 18 and 19, for the first time, the regulator will have the function of authorising a pension scheme before the scheme can operate in the market, as I mentioned. The implications of the decisions that the regulator will have to make are major, and we must be satisfied that we have given the regulator the tools it requires to ensure that such decisions are fully informed. It is therefore important for the Bill to make provisions that allow the regulator to gather the information it needs about the master trust schemes. The clauses will ensure that the regulator can use all the information-gathering powers effectively in relation to master trusts and the new authorisation regime.

Clause 20 gives the regulator the ability to withdraw a scheme's authorisation if it stops being satisfied that it meets the authorisation criteria. The clause is fundamental to the Bill; without it, there would be no consequence for a scheme that becomes authorised and then lets standards slip, or if events occur that materially impact whether the regulator remains satisfied that the authorisation criteria have been met.

The regulator seeks to support and assist those involved in running pension schemes before it comes to sanction them, but if a scheme no longer satisfies the regulator, the regulator must have the power to withdraw authorisation from the scheme. We will come to discuss the consequences of a decision to deauthorise a master trust scheme in due course, because such provisions are made later in the Bill. The clause simply provides a necessary power so that the regulator can make such a decision. Without that, the authorisation regime would be reduced to little more than a one-off check at the beginning and would not work to protect the interests of master trust pension schemes.

I will think about the point made by hon. Friend the Member for Amber Valley and either write to him overnight or bring a response to the next sitting. I apologise, but my mind has been on these matters and I will have to think about his point, which was a very good one.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clauses 15 to 20 ordered to stand part of the Bill.

Clause 21

Triggering event: duties of trustees

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 22 stand part.

Richard Harrington: Clauses 21 and 22 are the first in a series that extends what happens when a master trust experiences a triggering event, which I mentioned earlier. To remind members of the Committee, a triggering event could put a master trust scheme at future risk. The aim of the next series of clauses is to increase the level of oversight by the regulator during the triggering event period and to mitigate the risk to members and employers.

The provisions also intend to cover the way in which the situation is resolved, ensuring that it is supportive of a member's continued saving in a pension scheme and of an employer's automatic enrolment duties. The measures take account of the fact that there is likely to be a lower level of employer engagement in or influence over the running of the scheme, and the complexity of addressing the situation when there are multiple employers who also have automatic enrolment duties to fulfil.

3.15 pm

Clause 21 sets out that, following a triggering event, trustees are obliged to comply with the requirements set out in subsequent clauses. They must notify the regulator of certain triggering events; decide which continuity option to pursue, where they have a choice; and prepare an implementation strategy and secure the regulator's approval to it. The implementation strategy must set out how the interests of scheme members will be protected.

Clause 22 sets out what the triggering events are and when the triggering event period starts and finishes. It contains a table that lists the 10 triggering events and the dates on which each of them occurs. The triggering events are the key risk events that may arise in the life cycle of a master trust scheme under the authorisation regime. They reflect the different structures and circumstances of such schemes, in comparison with more traditional employer-sponsored occupation schemes.

Clause 22 also explains when the master trust enters a triggering event period. It states that this period lasts until

"the date on which the scheme is wound up…the date on which the trustees receive notification from the Pensions Regulator that the Regulator is satisfied that the triggering event has been resolved",

or

"the date on which it becomes clear that authorisation is not to be withdrawn".

Subsequent clauses set out how the scheme is to be subject to increased scrutiny requirements during the triggering event period. They also provide additional powers for the regulator, so that members are protected from the specific risks that may arise in the triggering event period, and support the orderly or managed exit of schemes when they ultimately move to closure.

It is essential to ensure that the authorisation regime can cater for closer supervision when triggering events occur. Legislation therefore has to set out clearly what those risk events are, the dates on which they are taken to start and finish, and consequent requirements. That is what the clauses achieve, in conjunction with subsequent clauses in the Bill.

Craig Mackinlay: I seek just one clarification from the Minister. Earlier today we agreed to Government amendment 3, which defined a scheme funder as

"a body corporate or a partnership that is a legal person".

However, item 5 in the table of triggering events listed in clause 22(6) interprets a scheme funder slightly differently, as

"a person or body of a kind that meets requirements prescribed under…the Pensions Act 2004".

I am concerned that we have agreed to an amendment that exempts individual persons, but there seems to be a slightly different interpretation of what the scheme funder is in the table of triggering events. It may just be an oversight, but some clarification would be helpful.

Richard Harrington: I will get back to my hon. Friend on that very technical point, but I do not believe that there is any intention for the definition to be different.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22 ordered to stand part of the Bill.

Clause 23

Notification requirements

Alex Cunningham: I beg to move amendment 28, in clause 23, page 16, line 19, after "employers" insert "and members".

This amendment would mean that members must be told of any triggering events, not just the employers.

The Chair: With this it will be convenient to discuss amendment 29, in clause 26, page 19, line 10, at end insert

"and Trustees should then notify members to this effect".

This requires Trustees of the Master Trust to notify members once TPR is satisfied that the triggering event has been resolved.

Alex Cunningham: I will continue to champion the members of master trusts this afternoon. The amendment would simply ensure that when triggering events happen, and if and when they are resolved, information on them flows right through the communication chain. As I said when I spoke on member engagement, it is important to understand that we need to put the member at the heart of the process. If members find out only at second hand about such events, which affect their hard-earned cash, it is bound to result in lower levels of trust—never mind all the anxiety and everything that goes with it. I pose the question: how would hon. Members feel if no one told them that there was an issue with their pension pot? I know that is rare for Members of Parliament, but if they had a separate pension pot and were not given that information, would they not be concerned? They would not be best chuffed, and they would want to know why they were not being informed.

Trust is vital, and it is at very low levels both in financial services and, more importantly, in us who make the law. How can we look our constituents in the eye if they ask us, "Why did you not put me first? It's my money. It's my retirement at risk"? There are those who claim that there are problems with reaching vast numbers of people, but this is the 21st century and it is not necessary to fell trees to make paper to send out hundreds of thousands of letters. It is a simple of chain of events, and if it can go to employers I believe it should also go to members.

Richard Harrington: Amendment 28 would require the trustees of a master trust that experiences a triggering event to notify all the members that the event has occurred and of other matters to be set out in regulations. The explanatory note to amendment 29 says that the intent is to require trustees to notify members once the regulator is satisfied that the triggering event has been resolved, but the effect of the amendment is a bit wider. It would require the trustees to inform members of the regulator's decision—in other words, whether it is satisfied that the event had been resolved or not.

Clause 23 requires key people associated with the master trust to notify the Pensions Regulator if the scheme experiences a triggering event. Clause 26 sets out the framework for a scheme pursuing continuity option 2—in other words, the trustees aim to resolve the triggering event. The resolution is the important part of it. Once the trustees believe they have resolved the event, they submit evidence to that effect to the regulator. Having considered the evidence, the regulator notifies

[Richard Harrington]

the trustees of whether it is satisfied that the event has been resolved. Our aim is for events to be resolved where possible. The scheme can then continue and members can keep saving in it. We have not required the trustees to notify members.

As the hon. Gentleman said, at the point that the triggering event happens, the trustees may be in discussions with the regulator and may not have reached a conclusion about whether the scheme will continue to operate or whether it will be wound up.

Alex Cunningham: I accept that the triggering is the actual start of the process, and that there may well be discussions. At what point does the Minister think the members ought to be told that a triggering event has in fact taken place and that their scheme is in some doubt?

Richard Harrington: To rebut that point—I emphasised the words "resolve" and "resolution"—we believe that the majority of triggering events will end up with a very satisfactory resolution. Remember, many members do not take an active decision to join; they join through their employer. They are not actively engaged in the scheme; their employer is the conduit, so providing incomplete information to members would cause undue distress and risk unintended consequences, such as members opting out of the scheme and stopping saving in a pension, when a resolution to the triggering event could very easily be agreed with the trustees or, indeed, opposed by the regulator.

If a scheme resolves its triggering event and continues to operate, I do not see why members should see any change. It is exactly the same for them: their pension saving will not be disrupted. I would not want them to be unduly alarmed or confused. The intervention of the regulator during the triggering event period, and the additional controls that are put in place during that period, will help to ensure the scheme gets back on track.

If the scheme is going to wind up—I believe this is the relevant point—members will be informed well ahead of anything directly impacting on them, and will be given the information and options.

Alex Cunningham: If the members are going to be told about the wind-up, where in the regulations is the requirement for the master trust to inform them?

Richard Harrington: The regulations have not yet been published, but the hon. Gentleman makes a valid point.

The aim behind these clauses is to ensure that members continue to save into a pension because they do not believe that the sky is falling in—the entire system is intended to ensure that that is not the case. To that end, members are not informed at such an early stage as is proposed in amendment 28, because of the adverse implications that could have and the absence of any practical advantage for members. What advantage would that provide to members, given that the matter will be resolved? There does not appear to be an obvious benefit.

However, I recognise how important it is that members are informed well ahead of something happening that might have a direct impact on them and—I think this is the core of the hon. Gentleman's point—disrupt their pension saving. I am confident that the measures included in the Bill, and those proposed for inclusion in regulations, will achieve that outcome. I therefore ask the hon. Gentleman to withdraw his amendment.

Alex Cunningham: I am particularly interested to know what proposals there might be in regulations to ensure that the member is told, whether at the winding-up stage or when it first has an impact on them, and how that will be defined. I hope that the Minister will respond to that point before I sit down. I accept that it is particularly important that members are engaged throughout the process. Unfortunately, the Minister does not agree with me on that point. I believe that there is no more key a person in this chain than the member, but I accept that they should be informed when it is a significant thing affecting their lives. The Minister might like to intervene to explain what proposal there will be in regulations to ensure that members are informed when there is a material impact on their pension pot. Otherwise, at this stage I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 23 ordered to stand part of the Bill.

Clause 24

Continuity options

Question proposed, That the clause stand part of the Bill.

Richard Harrington: The clause sets out the two continuity options that must be pursued by the trustees when there has been a triggering event. Option 1 requires the scheme to transfer out all members' accrued rights and benefits and then wind up. Option 2 is for the scheme to resolve the triggering event to the satisfaction of the Pensions Regulator. Trustees will have a choice under the regulator's authority, and once the regulator has decided to withdraw authorisation, that is final, or there is a notification that the scheme is not authorised and then they have to pursue continuity option 1.

Our aim is that members should continue to save despite the master trust of which they are a member experiencing a triggering event. Therefore, where the scheme is able to resolve its issues, it should do so. However, where the issue could lead to the failure and closure of the scheme, the members should be transferred out, under the auspices of the regulator, hopefully to continue to save with as little disruption as possible.

If authorisation is withdrawn or refused by the regulator, or there is a notification that the scheme is not authorised, members will have to be transferred out and the scheme wound up. Irrespective of the option, we want the process to be as smooth and as managed as possible. The mismanagement of an issue or an unmanaged closure of a scheme would be bad for members and could be detrimental to confidence and lead to members opting out of pension saving, which is the last thing we all want.

Where a master trust experiences an event that could lead to its failure, there needs to be greater planning and control and more safeguards for members and employers. It is important that the scheme has done detailed planning so that what happens following a triggering event is thought through and organised and the process is orderly and managed. That should help to ensure ongoing automatic enrolment without disruption.

3.30 pm

If a master trust has experienced a triggering event and is in a more risky position, that has implications for the members saving in it and the employers using it. The clause therefore requires the trustees, where they have an option, to decide which continuity option they will follow. That is important for dealing with the situation that the scheme finds itself in, and moving the situation forward for the benefit of the members and employers.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

Continuity option 1: transfer out and winding up

Richard Harrington: I beg to move amendment 5, in clause 25, page 17, line 21, leave out "Master Trust" and insert "pension".

This amendment and amendment 8 enable trustees pursuing continuity option 1 to propose a transfer of members' accrued rights and benefits to a pension scheme that is not a Master Trust scheme, as long as the alternative scheme has characteristics specified in regulations, and any additional requirements in the regulations are met.

The Chair: With this it will be convenient to discuss Government amendments 6 to 19.

Richard Harrington: The amendments, which apply to clauses 25 and 34, continue with the continuity options. These apply when the trustees of a master trust are pursuing option 1. Clause 25 sets out the framework for continuity option 1. This is where the scheme transfers out all the members' accrued rights and benefits, and winds up. The amendments would allow regulations to be made in future that would let the trustees in this situation choose a scheme that is not a master trust to receive their members' rights and benefits.

The receiving scheme would have to have characteristics set out in the regulations. The non-master trust receiving scheme would be made subject to exactly the same restrictions on increasing or introducing the new charges as those to which master trust receiving schemes are subject. The amendments would enable the type of schemes that can be receiving schemes to be widened where a master trust is going to wind up and has to transfer all its members out.

In that situation, although members have the opportunity to make their own choice about where their accrued rights and benefits go, where they do not make a choice there needs to be provision for their rights and benefits to be transferred into a suitable pension scheme. At present that is restricted to another master trust. These measures permit this to be opened up by providing a regulation-making power to include other pension schemes, should that be appropriate. It may well not be appropriate, but in some cases it will be. Such schemes could include personal pensions and pension schemes that provide decumulation options, such as drawdown. This means we will be able to react appropriately to future innovations and developments in the pensions market. Indeed, the rise of master trusts shows how quickly markets change. This may be of particular use where members were using a decumulation option, as it leaves open the possibility that members could make use of new decumulation products in future.

Allowing other types of pension schemes to receive transferred members, as long as they meet specified requirements, could increase the options available to trustees, introduce extra flexibility and widen the market for potential schemes. This might be useful if trustees found that they were struggling to find somewhere appropriate for their members' rights, which might particularly benefit members using decumulation options. Being able to increase the options in future might help reduce the risk that trustees of failing master trusts might not be able to find another master trust to take their members on.

As these amendments will mean that it is possible to widen the options available to the trustees of a master trust that was closing, and as that would be for the benefit of members, I commend them to the Committee.

Alex Cunningham: We give a general welcome to the amendments, some of which have been tabled in response to issues raised by my colleagues in the other place. The amendments are intended principally to ensure that scheme members are protected in the event of a winding up, and we certainly welcome that. We also wish to ensure that a master trust winding up does not disincentivise savers or negatively affect their rights and benefits.

Government amendment 5 means that if there is a triggering event and a master trust has to wind up and transfer members and their benefits, this can now be to a scheme other than another master trust scheme. This change, which has been made since the Bill left the House of Lords, invites three questions to which the answers are not clear. First, in the event of a failing master trust winding up, what conditions and regulatory standards must a receiving scheme that is not a master trust meet before the Pensions Regulator will authorise the transfer of members and their assets to it? Secondly, how will the concept of scheme funder in the Bill be applied to a receiving scheme that is not a master trust?

Thirdly, an essential provision in the Bill to protect master trust scheme members from bearing the costs of sorting out a scheme failure is in clause 34, which places a prohibition on increasing members' charges during a triggering event, including wind-up and transfer. The prohibition is binding on both the transferring and receiving master trust scheme. Can the Minister give a categorical assurance that the prohibition on increasing member charges will, in the light of the amendment, apply to any receiving scheme in a triggering event? If the receiving scheme is not a trust-based scheme, which regulator will police adherence to that prohibition? Where is the line of vision in the Bill to show that all receiving schemes, master trusts or otherwise will be bound by the prohibition on increasing members' charges?

We remain somewhat concerned that the Government have chosen to pursue their aim by introducing broad powers for the Secretary of State to make regulations in amendments 8, 10 and 12. We do not believe that approach provides a strong enough guarantee to scheme members that their benefits will not be eroded through the course of the transfer. Can the Minister guarantee

[Alex Cunningham]

to scheme members that that will never be the case? If he can, why not place such a guarantee in primary legislation? If he cannot, why not?

Richard Harrington: I have listened carefully to the hon. Gentleman's points. This goes back to the core question of whether things should be in primary or secondary legislation and why. I repeat the argument, which I think is very reasonable, that part of the Bill is providing flexibility for the way things will change in the future. Whichever party happens to be in power, primary legislation is very difficult and takes a long period. The industry moves far more quickly. I know I keep repeating the same answer, but that flexibility is very much the principle of the whole Bill.

There is a difference in principle between us, but I hope the hon. Gentleman will agree that I have tried to be pragmatic with the arrangements, which provide the necessary practicality. I cannot therefore give him the undertakings that I would like to, because of the flexibility within the Bill, but I am convinced that this system will provide the most protection for members. As he knows, a lot of thought has gone into this. It is not a question of dispute based on an irresistible force and an immovable object; we have come up with a suitable compromise.

Alex Cunningham: I recognise the constraints and difficulties of trying to develop regulations on the hoof, as I was perhaps requesting of the Minister. If members started to understand this area, they would be really worried about it and want to understand it more, but I accept the Minister's explanation.

Amendment 5 agreed to.

Amendments made: 6, in clause 25, page 17, line 23, leave out "subsection" and insert "subsections (1A)(b) and".

This amendment is consequential on amendments 5 and 8.

Amendment 7, in clause 25, page 17, line 24, after "the" insert "Master Trust".

This amendment is consequential on amendments 5 and 8.

Amendment 8, in clause 25, page 17, line 27, at end insert—

'(1A) Each pension scheme proposed under subsection (1)(a) must be—

(a) a Master Trust scheme, or

(b) in such circumstances as may be specified in regulations made by the Secretary of State, a pension scheme that has characteristics specified in regulations made by the Secretary of State ("an alternative scheme").".

See Member's explanatory statement for amendment 5.

Amendment 9, in clause 25, page 17, line 28, leave out "The notification" insert "Notification under subsection (1)(b)".

This amendment is consequential on amendments 5 and 8.

Amendment 10, in clause 25, page 17, line 33, leave out subsection (3) and insert—

"(3) The Secretary of State—

(a) must make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to a Master Trust scheme;

(b) may make regulations about how continuity option 1 is to be pursued, in a case where a proposed transfer is to an alternative scheme;

(c) may make regulations for the purpose of otherwise giving effect to continuity option 1, in either case.".

This amendment confers power on the Secretary of State to make regulations about how continuity option 1 is to be pursued, where a proposed transfer of members' rights and benefits is to a pension scheme that is not a Master Trust scheme.

Amendment 11, in clause 25, page 18, line 29, leave out "receiving".

This technical amendment removes an unnecessary word from clause 25(4)(l).

Amendment 12, in clause 25, page 18, line 37, at end insert—

"(4A) Regulations under subsection (3)(b) may include—

(a) any provision mentioned in subsection (4);

(b) provision deeming any member whose accrued rights or benefits are to be transferred to an alternative scheme to have entered into an agreement with a person of a description specified in the regulations.".

This amendment makes it clear that regulations about how continuity option 1 is to be pursued in a case where a proposed transfer is to pension scheme that is not a Master Trust scheme may include any of the provision mentioned in clause 25(4) and also provision deeming a member to have entered into an agreement with a person (such as the provider under the new scheme).

Amendment 13, in clause 25, page 18, line 46, leave out "subsection" and insert "subsections (1A)(b) and".—*(Richard Harrington.)*

This amendment makes regulations under the new subsection (1A)(b) (specifying alternative types of pension schemes to which transfers can be proposed) subject to the affirmative resolution procedure. (Regulations under the new paragraph (b) of subsection (3) (about bulk transfers to schemes other than Master Trust schemes) will also be subject to the affirmative procedure.)

Clause 25, as amended, ordered to stand part of the Bill.

Clause 26

CONTINUITY OPTION 2: RESOLVING TRIGGERING EVENT

Question proposed, That the clause stand part of the Bill.

Richard Harrington: The clause sets out the framework where a scheme pursues continuity option 2, which we have not mentioned in detail. The clause places a series of requirements on schemes and the regulator to ensure that a triggering event is resolved to the regulator's satisfaction. Subsections (2) and (3) set out that once the trustees consider that they have resolved a triggering event, they must notify the Pensions Regulator, setting out how they consider that has been achieved. Subsection (4) provides for the time period for the notification to be prescribed in regulations. Subsection (5) requires the regulator, having considered a notification, to notify the trustees of whether it is satisfied that the event has been resolved.

Our aim is to ensure that where trustees decide to try to resolve a triggering event, they have the opportunity to do so, so that the scheme can continue and its members can continue to save in the scheme with as little disruption as possible. However, following a triggering event, the trustees must set out a comprehensive and detailed implementation strategy containing the steps that they plan to take. We consider a scheme that has had a triggering event to have increased risk—that really is part of the definition of a triggering event—so such schemes need greater and more in-depth planning, safeguards for members and employers, and greater protection for members. However, we want members to continue to save and employers to continue to comply with their legal automatic enrolment minimum obligations, and for there to be general confidence in the master trust market.

We do not want to restrict how trustees resolve a triggering event, but we want to encourage and facilitate the continuity of pension saving by members. The best way to achieve that is for schemes to have the freedom to resolve their specific issues in the most appropriate way, but under the supervision of the regulator. There has to be an external check that triggering events have been properly resolved, because otherwise we could not assure the protection of members' savings, and the regulator provides that. We consider that to be the best way of ensuring the continuity and security that we want. We believe that the clause provides the framework for doing that, so I ask the Committee to support it.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Steve Brine.)*

3.42 pm

Adjourned till Thursday 9 February at half-past Eleven o'clock.

Written evidence reported to the House

PSB 01 Association of Pension Lawyers